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8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
11 ARTHUR FULFORD, on behalf of himself
and all others similarly situated

No. C-08-2041 MMC

12 Plaintiff,

13 **ORDER DENYING DEFENDANT'S
MOTION FOR PARTIAL JUDGMENT ON
THE PLEADINGS**

14 v.

15 LOGITECH, INC.,

16 Defendant.

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18 Before the Court is defendant Logitech, Inc.'s ("Logitech") Motion for Partial
19 Judgment on the Pleadings, filed April 8, 2009. Plaintiff Arthur Fulford ("Fulford") has filed
20 opposition, to which Logitech has replied. Having read and considered the papers filed in
21 support of and in opposition to the motion, the Court deems the matter appropriate for
22 decision thereon, hereby VACATES the hearing scheduled for May 15, 2009, and rules as
23 follows.

24 In the instant motion, Logitech argues Fulford lacks standing to pursue his claims
25 under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.*,
26 and California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500 *et seq.*, on
27 the ground that the Court has found Fulford is not entitled to restitution from Logitech (see
Order filed Nov. 14, 2008, at 5:2-10).

28 In support of its argument, Logitech relies on Walker v. Geico Gen. Ins. Co., 558

1 F.3d 1025 (9th Cir. 2009),¹ and Buckland v. Threshold Enters., Ltd., 155 Cal. App. 4th 798
2 (2007), wherein standing under the UCL was stated to be limited “to individuals who suffer
3 losses of money or property that are eligible for restitution.”² See Walker, 558 F.3d at 1027
4 (quoting Buckland, 155 Cal. App. 4th at 817). In so stating, however, neither Walker nor
5 Buckland was suggesting that the only type of action that may be brought under the UCL is
6 one for restitution, nor would such a holding be consistent with the language of the UCL,
7 which, for purposes of standing, requires only that the plaintiff have “suffered injury in fact
8 and [] lost money or property.” See Cal. Bus. & Prof. Code § 17204. Rather, those courts,
9 by the use of the phrase “eligible for restitution,” were endeavoring to distinguish between
10 the losses claimed in the respective cases before them and the type of loss cognizable
11 under the UCL, specifically, a loss of “money or property” in which the plaintiff has “either
12 prior possession or a vested legal interest.” See Walker v. USAA Cas. Ins. Co., 474 F.
13 Supp. 2d 1168, 1172 (E.D. Cal. 2007); see also Walker, 558 F.3d at 1027 (“agree[ing]” with
14 district court’s analysis). In particular, as determined in both Walker and Buckland, neither
15 of the respective plaintiffs therein had actually “lost money or property” of any sort. See
16 Walker, 474 F. Supp. 2d at 1173 (finding plaintiff lacked vested interest where claim based
17 on “estimate for proposed work”; distinguishing case where claim based on non-payment
18 for work performed); Buckland, 155 Cal. App. 4th at 818 & n.11 (noting Buckland
19 “voluntarily [bought] [the] defendant’s product to pursue a UCL action in the public interest,”
20 and, consequently, her purchase “[could not] reasonably be viewed as ‘lost’ money or
21 property under the standing requirement”).³

23 ¹Contrary to Logitech's assertion, the Court did not decline to consider the instant
24 argument in the context of Logitech's motion to dismiss Fulford's Second Amended
25 Complaint on the ground that Walker contains no analysis of the UCL's standing provision.
Rather, as Fulford notes, the Court deemed such argument untimely, as Logitech could
have raised the argument prior to its reply but failed to do so.

²⁶ There is no contention that standing under the FAL is governed by a different standard than standing under the UCL.

²⁸ ³Additionally, Buckland expressly limited its holding “to the special facts presented” therein. See Buckland, 155 Cal. App. 4th at 818 n.11.

1 By contrast, where a plaintiff has adequately alleged “loss of income,” “loss of
 2 financial resources,” or “economic loss,” a number of courts, subsequent to the enactment
 3 of the UCL standing requirement at issue herein,⁴ have found such plaintiff has standing
 4 under the UCL, irrespective of any such plaintiff’s inability to seek restitution from the
 5 defendant named therein. See, e.g., White v. Trans Union LLC, 462 F. Supp. 2d 1079,
 6 1084 (C.D. Cal. 2006) (holding, where plaintiff alleges “loss of income” and seeks only
 7 injunctive relief, UCL “does not require that the losses in question were the product of the
 8 defendant’s wrongful acquisition of the plaintiff’s property”); So. Cal. Housing Rights Ctr. v.
 9 Los Feliz Towers Homeowners Ass’n, 426 F. Supp. 2d 1061, 1069 (C.D. Cal. 2005)
 10 (holding plaintiff Housing Rights Center had standing under UCL “because it present[ed]
 11 evidence of actual injury based on loss of financial resources in investigating [a
 12 discrimination] claim and diversion of staff time from other cases to investigate the
 13 allegations [therein]”); Aron v. U-Haul Co. of Cal., 143 Cal. App. 4th 796, 802-03 (2006)
 14 (holding plaintiff had standing where plaintiff alleged “he suffered economic loss by being
 15 required to purchase excess fuel” from third party before returning rental truck to
 16 defendant).

17 Here, Fulford has alleged he “purchased the H1000 . . . for approximately \$200” (see
 18 SAC ¶ 22) and that had he “known that the H1000 Remote[] did not have Z-Wave
 19 capability, [he] would have paid less for [it] or purchased [a] different remote control
 20 device[].” (see id. ¶ 88). Such allegations, for the reasons discussed above, are sufficient
 21 to plead the requisite injury in fact and loss of money or property for purposes of standing
 22 under the UCL.

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 27 ⁴For purposes of standing, the UCL was “amended pursuant to the 2004 voter
 28 approval of Proposition 64” to provide that an action by a private citizen may only be
 prosecuted by a person who has “suffered injury in fact and has lost money or property.”
See Walker, 558 F.3d at 1027 (quoting Cal. Bus. & Prof. Code § 17204).

1 Accordingly, Logitech's motion is hereby DENIED.
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3 **IT IS SO ORDERED.**
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5 Dated: May 8, 2009
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MAXINE M. CHESNEY
United States District Judge